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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 Barbara Stuart Robinson,

7 Plaintiff,

8 v.

9 Las Vegas Metropolitan Police Department,

10 Defendant.

Case No. 2:21-cv-01074-RFB-DJA

Order

11 Before the Court is Defendant's motion to stay discovery. (ECF No. 19). Plaintiff—
12 proceeding *pro se*—did not file a response. Because the Court finds that Defendant has carried its
13 burden of demonstrating that discovery should be stayed, it grants the motion. The Court finds
14 these matters properly resolved without a hearing. LR 78-1.

15 **I. Background.**

16 In her amended complaint, Plaintiff asserts that, after she called police to a local
17 convenience store, one officer arrived “looked at [her] black face and told [her] to leave the
18 property never even asking for a name” and then walked past her into the convenience store.
19 (ECF No. 9). Plaintiff alleges that the officer “disregard[ed] witnesses and circumstances” based
20 on her race. (*Id.*). From these facts alone, Plaintiff alleges violations of various statutes
21 including: (1) NRS 233.010, a declaration of Nevada's public policy as it relates to obtaining
22 housing and employment without discrimination; (2) NRS 233.160, outlining the process of filing
23 complaints with the Equal Housing Commission about discriminatory practices in housing and
24 employment; (3) NRS 281A, which outlines ethics in government; (4) 42 U.S.C. § 1983, which
25 provides a path for private enforcement of substantive constitutional rights against a defendant
26 acting under color of state law; (5) Public Law 88-352 and 78 Stat. 241 which broadly refer to the
27 Civil Rights Act of 1964; and (6) 18 U.S.C. § 242, which provides a criminal—not a civil—cause
28

1 of action. (*Id.*). Plaintiff also appears to assert trespass and intentional or negligent infliction of
2 emotional distress. (*Id.*).

3 Defendant moved to stay discovery. (ECF No. 19). It argued that its pending motion to
4 dismiss would be completely dispositive of the action, that no additional discovery is necessary to
5 decide the motion to dismiss, and that its motion to dismiss has a high likelihood of success.
6 (*Id.*). Plaintiff did not respond to Defendant's motion.

7 **II. Discussion.**

8 Courts have broad discretionary power to control discovery. *See, e.g., Little v. City of*
9 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). In deciding whether to grant a stay of discovery, the
10 Court is guided by the objectives of Rule 1 to ensure a just, speedy, and inexpensive
11 determination of every action. *See Kidneigh v. Tournament One Corp.*, No. 2:12-cv-02209-APG-
12 CWH, 2013 WL 1855764, at *2 (D. Nev. May 1, 2013). "The Federal Rules of Civil Procedure
13 do not provide for automatic or blanket stays of discovery when a potentially dispositive motion
14 is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011). However,
15 preliminary issues such as jurisdiction, venue, or immunity are common situations that may
16 justify a stay. *See Twin City Fire Ins. v. Employers of Wausau*, 124 F.R.D. 653 (D. Nev. 1989);
17 *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013)
18 (granting stay based in part on alleged lack of subject matter jurisdiction). Further, motions to
19 stay discovery pending resolution of a dispositive motion may be granted when: (1) the pending
20 motion is potentially dispositive; (2) the potentially dispositive motion can be decided without
21 additional discovery; and (3) the Court has taken a "preliminary peek" at the merits of the
22 potentially dispositive motion to evaluate the likelihood of dismissal. *See Kor Media Group, LLC*
23 *v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

24 A party seeking to stay discovery pending resolution of a potentially dispositive motion
25 bears the heavy burden of establishing that discovery should be stayed. *See, e.g., Turner*
26 *Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (noting that a
27 stay of discovery may be appropriate where the complaint was "utterly frivolous, or filed merely
28 for settlement value."). When deciding whether to issue a stay, a court must take a "preliminary

1 peek” at the merits of the dispositive motion pending in the case. *Tradebay*, 278 F.R.D. at 602-
2 603. In doing so, a court must consider whether the pending motion is potentially dispositive of
3 the entire case, and whether that motion can be decided without additional discovery. *Id.* This
4 “preliminary peek” is not intended to prejudge the outcome, but to evaluate the propriety of a stay
5 of discovery “with the goal of accomplishing the objectives of Rule 1.” *Id.* (citation omitted).
6 That discovery may involve inconvenience and expense is not sufficient, standing alone, to
7 support a stay of discovery. *Turner Broadcasting*, 175 F.R.D. at 556. An overly lenient standard
8 for granting requests to stay would result in unnecessary delay in many cases. Finally, the failure
9 of an opposing party to file points and authorities in response to any motion constitutes a consent
10 to granting the motion. LR 7-2(d).

11 After taking a preliminary peek at the pending motion to dismiss, the response to that
12 motion, and the reply, the Court finds that Defendant has carried its heavy burden of establishing
13 that discovery should be stayed. The issues before the Court in the pending motion to dismiss do
14 not require further discovery as they have been fully briefed. And Plaintiff has not responded
15 with any arguments that further discovery is needed. Further, the issues in the pending motions to
16 dismiss are potentially dispositive of the entire case. The gravamen of Defendant’s motion is that
17 Plaintiff has failed to provide the factual basis for her claims and has asserted claims that are not
18 applicable against the LVMPD. In taking its preliminary peek, the Court is not convinced that
19 Plaintiff will overcome these arguments. Moreover, Plaintiff has not filed points and authorities
20 in response to Defendant’s motion, constituting her consent to the Court granting it. The Court
21 thus finds that this is a case where a temporary stay of discovery will further the goal of judicial
22 economy.

23 **IT IS THEREFORE ORDERED** that Defendant’s motion to stay discovery (ECF No. 19)
24 **is granted.**

25 DATED: November 4, 2021

26 
27 DANIEL J. ALBREGTS
28 UNITED STATES MAGISTRATE JUDGE